

**CENIT NORTH AMERICA INC.  
TERMS AND CONDITIONS FOR DELIVERIES AND SERVICES**

Each Purchase Order for delivery and implementation Services placed with CENIT North America Inc. (“CENIT”) is subject exclusively to these terms and conditions including all addenda (collectively, this “Agreement”), which shall apply to and form a part of every Purchase Order confirmation (“Order Confirmation”) issued by CENIT with respect to CENIT delivery and implementation Services for the Software and Equipment and shall supersede and replace any other terms and conditions appearing on any Customer Purchase Order form. Nothing contained in or attached to any Order Confirmation will operate to modify or add to the terms and conditions of this Agreement unless it is the mutual intent of the parties as stated in writing to so modify or add to these terms and conditions in respect to a specific Purchase Order.

**1. Definitions.**

- 1.1. Effective Date: The date specified in the Order Confirmation.
- 1.2. Equipment: All hardware and other goods described in an Order Confirmation that are purchased by Customer from CENIT.
- 1.3. Services: The Software and Equipment delivery and implementation services to be provided to Customer under the terms of this Agreement, as specified in the Order Confirmation.
- 1.4. Software: The CENIT software licensed to Customer, as specified in the Order Confirmation and as updated, enhanced or replaced.
- 1.5. Third Party Software: Any software licensed to CENIT by a third party software vendor and sublicensed to Customer by CENIT, and any software licensed directly to Customer by a third party software vendor.
- 1.6. Term: From the Effective Date until terminated as provided in this Agreement.

**2. Scope of Deliveries and Services**

- 2.1. Scope of Services. CENIT shall perform all delivery and implementation Services as described in the Order Confirmation.
- 2.2. Additional Services. All requests for additional work by Customer must be set out in an Order Confirmation prepared and submitted by Customer and if accepted by CENIT in writing, shall be included as “Services” pursuant to this Agreement. In the event that Customer orally places an order, and CENIT sends a written Order Confirmation confirming the order to Customer, Customer shall have eight (8) days from the date of receipt to accept or reject the order (the “Order Acceptance Period”). If

CENIT does not receive notice of acceptance or rejection within the Order Acceptance Period, the order shall be deemed accepted, and shall become part of this Agreement and binding on Customer. Oral agreements must be set forth in writing and signed by CENIT in order to be effective.

2.3. Later Performed Services. CENIT reserves the right to implement changes to the Software installed on Customer's systems even after it completes its obligations under this Agreement, provided that such changes do not materially affect the agreed upon functionality of the Software.

### **3. Terms Relating to Software Use and Proprietary Content**

3.1. Terms Controlling Software Use. Notwithstanding anything to the contrary, in the event that the terms of this Agreement conflict with the terms in the agreement titled "CENIT North America Software License Terms and Conditions," with respect to use of the Software, the terms of the CENIT North America Software License Terms and Conditions shall control.

3.2. Ownership of the Software and Proprietary Content. CENIT shall own all worldwide right, title and interest in and to the Software and any modifications, configurations, customizations, enhancements, upgrades and updates thereof, in its documentation, and in any software tools, specifications, ideas, concepts, know-how, processes, techniques and data, advertisements, brochures and other materials associated with the Software (collectively "Proprietary Content"), including all copyright, trademark, patent and other intellectual property rights therein. Nothing in this Agreement or otherwise shall be deemed to prohibit or limit in any way CENIT's ownership of, or right to use, the Proprietary Content in whole or in part for any purpose. CENIT reserves the right to grant licenses to use any or all of the same to third parties. Customer shall, within a reasonable time after receipt of CENIT's request, execute any document and perform any act necessary to assign and vest in CENIT all intellectual property rights described in this Agreement.

3.3. Restrictions. Unless otherwise agreed, Customer shall not, nor cause or authorize any third party to (a) distribute, rent, sell, lease or otherwise display, disclose, transfer or make available the Software, the associated documentation or other Proprietary Content to any third party or use the Software for the benefit of any third party, including Customer's subsidiaries and other affiliated companies; (b) modify, change, reverse assemble, reverse compile or reverse engineer the Software, or otherwise attempt to discover any Software source code or underlying Proprietary Information; (c) use interfaces or other code not provided by CENIT to interface the Software to other software; (d) remove, efface or obscure any copyright notices, logos or other proprietary notices or legends (whether CENIT's or its suppliers') from the Software or other Proprietary Content; (e) remove, circumvent, or modify security

codes, if any, or features serving the identification of the Software; (f) export or re-export, or allow the export or re-export of any Proprietary Information or any copy or derivative product thereof or in violation of any restrictions, laws or regulations; or (f) copy the Software or the associated documentation in any form, without the express written consent of CENIT. Customer shall not use or allow any person to examine the Software or any related materials for the purpose of creating another system which competes with the Software and Customer shall not use or disclose any data or information relating to the Software or the technology, ideas, concepts, know-how or techniques embodied in the Software to third parties except as necessary to operate the Software as contemplated by this Agreement.

3.4. Ownership of Third Party Software. Customer acknowledges and agrees that the applicable supplier(s) of the Third Party Software shall own all worldwide right, title and interest in and to the Third Party Software (and any intellectual property rights therein), subject to such suppliers' license, if any, of the Third Party Software to CENIT.

#### **4. Fees; Payment**

4.1. Fees. Unless otherwise indicated in an Order Confirmation, Customer shall pay fees based on the prices on CENIT's price list, which may be modified from time to time. In addition to such fees, all applicable sales, use, VAT and other tax or governmental charges shall be paid by Customer, as well as all travel and out-of-pocket expenses incurred in conjunction with the Services. If Equipment is to be delivered Customer shall be responsible for packing, freight and transport insurance and shipping costs and expenses.

4.2. Surcharge for Small Orders. If the net order value is less than US \$250, Customer shall pay an extra charge for small orders in the amount of US \$25.

4.3. Invoices. Unless otherwise agreed in writing, CENIT shall invoice Customer and Customer shall be responsible for the full invoiced amount, without any discounts or deductions, by the date indicated on the invoice. Payment not received by the due date indicated on the invoice shall be deemed overdue.

4.4. Overdue Payments. If all or any significant part of any invoiced amount is overdue, CENIT may withhold all further Services until such amount is paid in full. CENIT reserves the right to charge a late fee of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less, on all amounts due hereunder which are not paid in full fifteen (15) days from the date of invoice. Customer shall reimburse CENIT for all collection and legal fees incurred by CENIT in collection efforts pertaining to amounts due hereunder which are not paid in full at the time specified in this Agreement.

4.5. Prepayment. If all or any significant part of any invoiced amount is overdue or CENIT gains knowledge of facts that raise doubts about Customer's ability to pay, CENIT is entitled – without prejudice to any other rights or remedies – to suspend performance of the Services and to request advance payment and/or a security deposit for the performance of all outstanding Services.

4.6. Method of Payment. Unless otherwise agreed, CENIT will not accept payment in the form of a check or a bill of exchange. Acceptance of a bill of exchange or check in itself does not constitute formal payment. Payment shall be deemed made at the time the bill or check has cleared and the funds are available in CENIT's account(s). Further, regardless of the maturity dates of accepted bills of exchange, CENIT is further entitled to demand payment in cash subject to the restitution of the bills. All costs and expenses for the discounting or collection of bills of exchange and checks shall be borne by Customer.

4.7. Disputed Amounts. Customer is not entitled to set counterclaims off against claims of CENIT except counterclaims that are based on this Agreement and either have been expressly admitted by CENIT or have been recognized by a declaratory judgment that is not subject to appeal.

## **5. Delivery of Equipment and Services, Risk of Loss, Delivery Deadlines**

5.1. Risk of Loss. Unless otherwise agreed in writing in writing: (a) CENIT shall arrange for shipment by common carrier of the Equipment purchased by Customer, with the cost of shipping and transportation to be borne by Customer, (b) risk of loss of the Equipment shall pass to Customer as soon as the Equipment leaves CENIT's warehouse and shipment shall occur at Customer's risk, and (c) CENIT may, in its sole discretion, determine the manner of and common carrier for shipment of the Equipment. If Customer is to pick up the Equipment, risk of loss passes to Customer upon notification to Customer that the Equipment is ready for pick up. Shipping insurance shall be taken out only on Customer's express instructions and at Customer's expense. In the event of a delay in dispatch due to circumstances for which Customer is responsible, risk of loss passes to Customer upon notification that the Equipment is ready for dispatch. In such case, CENIT is willing to take out any insurance policies requested by Customer, provided that Customer pays for such policies.

5.2. Deadlines are Not Binding. Unless agreed otherwise in writing, deadlines or due dates set forth in an Order Confirmation or elsewhere in this Agreement for delivering the Equipment or Services are not binding. In any event, such deadlines or due dates may never be prior to CENIT's execution of and Customer's acceptance of a written Order Confirmation.

5.3. Best Efforts to Meet Reasonable Deadlines. CENIT shall use its best efforts to meet reasonable deadlines or due dates for the delivery of Equipment and Services agreed upon in advance by CENIT in writing, provided that Customer has timely and properly fulfilled Customer's duties, such as providing documentation, approvals, or releases to be furnished by Customer or paying any agreed upon down-payments. A deadline will be deemed to be unreasonable if Customer has not timely and properly fulfilled its duties. With respect to Equipment, if an item has left CENIT's warehouse before the applicable deadline, or Customer has been notified of the item being ready for pick up and/or dispatch before the applicable deadline, then the deadline shall be deemed to have been met.

5.4. Discount for Missing a Reasonable Deadline. In the event that CENIT misses a reasonable deadline for delivering Equipment or Services for reasons solely within CENIT's control, Customer shall be entitled to demand, for each full week of delay, lump-sum damages of up to 0.5% of the price of the Equipment or Services whose delivery was delayed, up to a maximum of 5% of such price, provided that Customer satisfactorily shows that it incurred loss or damage due to such delay. This shall be Customer's exclusive remedy for a missed deadline.

5.5. Events Beyond CENIT's Control. The remedy specified in Section 5.4 will not be available to Customer if the delay in delivery of Equipment or Services was due to reasons beyond CENIT's control. CENIT shall be released from the duty to perform in the event of operational breakdown (shortage of materials, strikes) for which CENIT is not responsible and other events of force majeure as described in Section 10.4, as well as in the event of late delivery of Equipment and other services supplied to CENIT itself, for the period during which the impediment continues to exist. This release shall also apply if these circumstances occur to suppliers of CENIT. To the extent that CENIT is released from the duty to perform, CENIT shall return all applicable advance payments, if any, made by Customer. Under the circumstances described in this section and Section 10.4, CENIT shall not be liable to Customer for any damages.

5.6. Partial Deliveries. Partial deliveries of Equipment and Services shall be permitted to a reasonable extent.

## **6. Title to the Equipment**

6.1. Retention of Title. CENIT shall retain title to the Equipment until all potential claims arising from this Agreement have been fully discharged. With respect to Customer's account, the title retained is security for CENIT's right of offset.

6.2. Repossession. In the event that Customer breaches this Agreement through a failure to pay any amount due hereunder or any other breach, CENIT shall be entitled to repossess all Equipment. CENIT is not obligated to terminate this Agreement in order to

be able to repossess the Equipment and/or assert its retention of title. These acts, including the attachment of the delivered Equipment by CENIT, do not constitute a termination of this Agreement unless CENIT has notified Customer in writing of such termination. After repossessing the delivered Equipment, CENIT shall be entitled to sell or otherwise dispose of the same. The proceeds from such sale or other disposition, minus the reasonable costs of selling or disposing of such Equipment, shall be credited towards Customer's liabilities to CENIT.

6.3. Customer's Responsibilities. Customer shall be obligated to treat any delivered Equipment with reasonable care and, at CENIT's request, to sufficiently insure the same against damage for the period of time CENIT retains title to the Equipment. Customer hereby assigns to CENIT any present or future claims it may have against an insurance company related to the Equipment. If any event results in the creation of restrictions, liens, security interests or other charges, claims or encumbrances on the Equipment for the benefit of third parties, Customer must immediately notify CENIT of such events in writing so that CENIT can assert its title. To the extent that the third party is not able to reimburse CENIT for the judicial and extra-judicial costs incurred by CENIT in connection with the enforcement of its property rights, Customer shall be liable for any such loss incurred by CENIT.

6.4. Combination of Secured Equipment. Customer shall have the right, subject to revocation, to modify the Equipment and combine it with other items for its own business purposes. Any such modification or combination shall be deemed to be on behalf of CENIT without commitment on the part of CENIT. In the event of any such modification or combination, Customer shall give CENIT co-ownership in the modified, new or combined item in the same proportion as the invoiced price of the Equipment is to the total value of the combined or modified goods, including modification costs. The provisions applicable to the Equipment under this Section 6 shall apply to the item created through modification or combination of the Equipment.

6.5. Disposal of the Equipment. Customer may dispose of the Equipment to which CENIT has retained sole or joint title only in the ordinary course of business on its usual terms; this applies, however, only as long as Customer is not in default. In the event of resale, Customer hereby assigns to CENIT, in advance, any claims arising against the purchasers or any third party in the amount of the amount of CENIT's invoice (plus tax) plus a security surcharge of 10%. CENIT hereby accepts the assignment.

6.6. Claim Collection. Customer shall be entitled to collect on the claims assigned to CENIT under Section 6.5, until such rights are revoked by CENIT. Such rights may be revoked by CENIT for cause at any time. Customer shall, upon CENIT's request, notify any third-party debtors of any assignments to CENIT and furnish CENIT with the information and documentation required for collection.

6.7. Restrictions. Customer may not (i) transfer to third parties any Equipment in which CENIT has retained sole or joint title, (ii) assign claims resulting from resale to a third party or make an offset, or (iii) agree to a ban on assignment with any purchasers with respect to such claims. In the event that Customer assigns all or substantially all of its assets, including the Equipment, to a third party, the claims assigned to CENIT shall be expressly exempted.

6.8. Security. If the value of the security existing on behalf of CENIT exceeds the value of CENIT's claims against Customer by more than 10%, CENIT shall be obligated to release the security exceeding this limit at Customer's request; the individual objects to be released may be chosen by CENIT in its sole discretion.

## **7. Equipment Defects**

7.1. Notice of Acceptance of Equipment. Upon delivery of any Equipment, Customer shall promptly examine the delivered Equipment without undue delay and notify CENIT in writing of any defects. Such notification must be received by CENIT no later than seven (7) working days after Customer's receipt of the Equipment or, in the case of hidden defects, within seven (7) working days after the defects are discernible ("Equipment Acceptance Period"). If notice of acceptance or rejection is not provided to CENIT within the Equipment Acceptance Period, then the Equipment shall be deemed to have been accepted. Customer may not refuse to accept the Equipment for immaterial or insignificant defects. Notwithstanding anything in this Agreement to the contrary, CENIT is not liable for any immaterial or insignificant defects.

7.2. Remedies for Defective Equipment. In the event that notice of rejection is timely provided to CENIT, CENIT shall either (i) correct the defect in the Equipment; or (ii) deliver replacement Equipment. The costs associated with such correction or replacement, including costs for wages, materials, transport, and travel, shall be paid by CENIT only to the extent that such costs are not due to the Equipment being transferred by Customer to another location, unless such relocation is in accordance with the agreed use of the Equipment by both parties. Replaced Equipment is the property of CENIT and must be promptly returned to CENIT.

7.3. Remedies for Uncurable Equipment Defects. If CENIT is unable to either (i) correct the defect in the Equipment; or (ii) deliver replacement Equipment in accordance with Section 7.2, then Customer is entitled, in its discretion and without prejudice to possible claims for damages or for reimbursement of expenses in accordance with Section 10, to either (i) receive a reduction in the purchase price of the Equipment or (ii) if CENIT has materially breached its duties under this Agreement and failed to cure such breach within a reasonable period of time after notice, to terminate this Agreement.

7.4. Termination of Duty to Remedy Equipment Defects. If the Equipment has been modified by Customer such as by the installation of foreign parts, CENIT is under no duty to remedy any Equipment defects. Customer is entitled to remedy a defect itself or have it remedied by a third party and may request reimbursement of the associated costs from CENIT only in the event (i) of an emergency where operational safety is endangered or (ii) disproportionate damages would have resulted if Customer had not taken immediate action. In such a case, Customer shall be obligated to provide substantial proof that operational safety would have been endangered or disproportionate damage would have occurred had Customer not remedied that defect without CENIT's authorization. Customer must notify CENIT immediately of any modifications to the Equipment.

7.5. Time Limit for Bringing Claims for Equipment Defects. Claims based on defects in the Equipment or replacement parts (including claims for damages and for reimbursement of expenses due to defects) must be brought within one (1) year after the delivery of the original Equipment.

7.6. Withholding of Payments. If the Equipment is defective, Customer may withhold payment only to the extent reasonably proportional to the defect and only if Customer's claims are uncontested, or are final and have been recognized by a declaratory judgment in Customer's favor. If a complaint about a defect is frivolous or unjustified, CENIT shall be entitled to demand reimbursement from Customer of the expenses incurred by CENIT, including, but not limited to, attorney's fees and other fees necessary to collect the amount due from Customer.

## **8. Software Defects**

8.1. Software Warranty. CENIT warrants that the Software will substantially perform as described in the applicable documentation provided by CENIT unless otherwise expressly guaranteed in the applicable Order Confirmation..

8.2. Software Defects. A "Software Defect" exists if the Software does not function substantially as described in the Software documentation provided by CENIT. Notwithstanding anything in this Agreement to the contrary, CENIT is not liable for any immaterial or insignificant defects.

8.3. Exclusions from Software Warranty. Excluded from CENIT's warranties with respect to the performance of the Software are all Software Defects or other impairments:

- (a) that have been caused by faulty installation, configuration or use by Customer and that could have been prevented by carefully reading the Software's documentation;



- (b) if Customer has non-existent or insufficient backup practices;
- (c) that are due to a virus or other factor such as fire, accidents, power outage, etc. for which CENIT is not responsible;
- (d) that are due to defects of the Equipment, the operating system, or Third Party Software;
- (e) that are due to the Software having been modified by a party other than CENIT; and
- (f) that are not reproducible.

8.4. Customer Responsibilities With Respect to Software Defects. If a Software Defect exists, Customer shall be obligated to furnish CENIT with all information necessary for analysis and repair of the Software Defect, and to grant CENIT and/or the persons commissioned by CENIT unrestricted access to the Software and the system on which the Software is installed. The information furnished to CENIT must include (i) the type of defect, (ii) the circumstances under which the defect occurs, and (iii) the work that has been carried out to correct the defect. Software Defects must be described in sufficient detail such that they can be reproduced. If CENIT carries out an error analysis at Customer's request and the analysis shows that there is no defect that CENIT is obligated to correct under this Agreement, CENIT may invoice Customer for the cost of such analysis based on CENIT's then-current hourly rates.

8.5. Termination of Duty to Remedy Software Defects. The warranty set forth in Section 8.1 only covers defects that existed at the time the Software was delivered to or accepted by Customer and shall be void if Customer (i) modifies or commissions a third party to modify the Software without CENIT's consent, (ii) uses the Software in any manner contrary to documentation provided by CENIT, or (iii) uses the Software with hardware or software other than that for which the Software was designed or configured.

8.6. Remedies. CENIT's sole obligation, and Customer's sole remedy, in the event the Software fails to substantially perform the functions described in the applicable documentation, if any, shall be for CENIT to correct the defective parts of such Software. CENIT shall not be obligated to take any action if (i) the Software is used other than in accordance with CENIT's instructions or the applicable documentation; (ii) the Software has been modified or converted by Customer or any third party; (iii) the operation of the Software is affected by a malfunction in any other software or in any hardware or other equipment; (iv) Customer has not installed any error corrections or updates made available by CENIT or continues to use the Software after receipt of written notice by CENIT that such use may cause errors; (v) any other cause within the control of

Customer results in the Software becoming inoperative; or (vi) Customer breaches this Agreement.

8.7. Time Limit for Bringing Claims for Software Defects. Claims based on Software Defects (including claims for damages and for reimbursement of expenses due to defects) must be brought within one (1) year after the Software Defect arose.

## 9. **Third Party Rights to the Software**

9.1. Warranty Against Third Party Claims. CENIT warrants within the limits of the applicable statutory provisions that the Software is free of third-party rights that prevent Customer's use of such Software as set forth in this Agreement.

9.2. Indemnification for Third Party Claims. In the event that the third party claims described in Section 9.1 are asserted against Customer, CENIT agrees to indemnify Customer for all costs associated with defending against such claims, provided that (i) Customer promptly notifies CENIT in writing of the claim or action and (ii) CENIT has sole control of the defense and settlement of the claim or action.

In defending against any claim or action pursuant to the preceding clause, CENIT may at its option (a) consent, (b) settle, (c) procure for Customer the right to continue using the Software, or (d) modify or replace the Software so that it no longer infringes, to the extent that the exercise of any option does not result in a material adverse change in the material operational characteristics of the Software, and so long as equivalent functions and performance provided by the Software remain following implementation of the option. If CENIT concludes in its judgment that none of the foregoing options is reasonable or practicable, then CENIT may terminate the license to the Software, upon which Customer shall return the original and all whole or partial copies of the Software to CENIT and, if Customer has purchased a term license, CENIT shall refund or credit to Customer an amount equal to the pro rata portion of the license fee paid by Customer proportionate to the remainder of the license term. CENIT has no liability with respect to patent infringement or trade secret misappropriation arising out of modifications of the Software made to Customer's order or specification or use of the Software in combination with other software, products or equipment not specified in this Agreement or otherwise recommended or approved by CENIT.

9.3. Indemnification for Misuse. Customer agrees to indemnify, defend and hold harmless CENIT and its subcontractors and affiliates and each supplier of Third Party Software against any damages, costs and expenses arising out of (i) Customer's use or misuse of any Software or of any Third Party Software or (ii) any breach of any representation or covenant of Customer under this Agreement.

9.4. Remedy for Failure to Defend Customer. To the extent that CENIT fails to take measures in accordance with Section 9.2 within a reasonable period of time, Customer may at its option, without prejudice to possible claims for damages or for reimbursement of expenses in accordance with Section 10, demand a reduction of the agreed fees or, if the restrictions originating from the third party rights are significant, terminate this Agreement.

## **10. Warranty Disclaimer; Limitation of Liability**

10.1. IMPLIED WARRANTY DISCLAIMER. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES, SOFTWARE, EQUIPMENT AND ANY THIRD PARTY SERVICES, SOFTWARE, HARDWARE AND OTHER EQUIPMENT ARE PROVIDED "AS IS," AND CENIT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, SOFTWARE, EQUIPMENT, THE THIRD PARTY SOFTWARE, ANY HARDWARE, ANY OTHER EQUIPMENT OR THE RESULTS THAT MAY BE OBTAINED BY USING THEM, AND DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND TITLE.

10.2. Limitation of Liability. CENIT's liability to Customer for any and all proven, direct and foreseeable damages related to the Services or otherwise arising out of this Agreement shall not exceed the total amount of fees paid by Customer to CENIT under this Agreement during the twelve months immediately preceding the event giving rise to the liability.

10.3. Limited Liability of Parties Affiliated with CENIT. The limitations of liability set forth in this Agreement apply not only to CENIT, but also to CENIT's representatives, employees, contractors and agents.

10.4. Force Majeure. Neither party shall be liable for any failure or delay in performing under this Agreement, where such failure or delay is due to causes beyond its reasonable control, including natural catastrophes, governmental acts or omissions, war, acts of rebellion, laws or regulations, terrorism, labor strikes or difficulties, communications systems breakdowns, hardware or software failures, transportation stoppages or slowdowns or the inability to procure supplies or materials.

10.5. No Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT, CENIT WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER OR NOT CENIT WAS NOTIFIED OF THE POSSIBILITY OF THE SAME, ARISING OUT OF THIS AGREEMENT.

10.6. No Liability for Third Parties. Customer acknowledges that CENIT is not responsible for any action or inaction of any third parties, including, but not limited to, financial and credit reporting institutions, real estate brokers, appraisers, moving and storage firms, merchants, software vendors and internet service providers. Any “authorization” by CENIT of any such third party does not constitute a representation or warranty with respect to the third party or its products or services, but rather, merely indicates that the third party is authorized to market the product or services at issue through CENIT.

10.7. Third Party Software Limitation of Liability. Customer further acknowledges and agrees that IN NO EVENT WILL CENIT OR THE SUPPLIER(S) OF THIRD PARTY SOFTWARE BE LIABLE TO CUSTOMER FOR ANY DAMAGES WHATSOEVER, INCLUDING DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THE THIRD PARTY SOFTWARE.

10.8. No Liability for Actions based on Inaccurate Information. Customer acknowledges that, in performing its duties under this Agreement, CENIT will necessarily rely upon information, instructions and services from Customer, employees and agents of Customer or of Customer’s clients, financial and credit institutions, real estate brokers, appraisers, moving and storage firms, merchants, Software and hardware CENITs, internet service providers and other third parties. Customer fully assumes the risk associated with errors in such information, instructions and services.a

10.9. Limitation on Actions. Any action by either party must be brought within one (1) year after the cause of action arose.

10.10. Limitations Reasonable. Customer acknowledges that the exclusion and limitation of remedies provided under this Agreement are neither unreasonable nor unconscionable and if CENIT’s liability had not been so limited, the fees charged to Customer hereunder would have been substantially higher.

## **11. Confidentiality**

11.1. Definition of Confidential Information. The parties expressly acknowledge that in the course of their performance hereunder, CENIT may learn or have access to certain confidential business information of Customer and Customer may learn or have access to certain confidential business, trade secret, proprietary or other like information or products of CENIT or of third parties, including, but not limited to, the Software and the Third Party Software and their respective characteristics, performance specifications, database architecture and documentation, CENIT’s plans, processes and techniques and CENIT’s prices, fees and payment terms (the “Confidential Information”). Notwithstanding anything in this Agreement to the contrary, except as provided in this Section 11, the party receiving the information (the “Receiving Party”) shall keep strictly

confidential any Confidential Information that it learns from the party disclosing such information (the “Disclosing Party”).

11.2. Exclusions. The term “Confidential Information” shall not include any product or information that: (i) is in the public domain or enters the public domain through no fault of the Receiving Party; (ii) was known by the Receiving Party prior to the commencement of discussions regarding the subject matter of this Agreement; (iii) is or was independently developed by the Receiving Party; or (iv) is or was rightfully disclosed to the Receiving Party by a third party without continuing restrictions on its use or disclosure. Further, either party may disclose Confidential Information to the extent required by law or legal process, provided that the party producing the information uses reasonable efforts to give the other party a reasonable opportunity to intervene to prevent or limit such disclosure.

11.3. Return of Confidential Information. Each party agrees that it shall return to the Disclosing Party, upon the Disclosing Party's request, any Confidential Information belonging to the Disclosing Party and copies thereof, except such Confidential Information whose retention may be required for the performance of either party's duties under this Agreement or the exercise of their rights hereunder.

## **12. Term and Termination**

12.1. Term. This Agreement shall commence as of the Effective Date and shall remain in effect for the duration specified in the Order Confirmation or elsewhere in this Agreement, unless this Agreement is terminated earlier in accordance with the terms set forth in this Section 12.

12.2. Termination. Either party shall have the right to terminate this Agreement, regardless of its Term, if (a) the other party breaches any material provision of this Agreement; (b) a receiver is appointed for the other party or its property, the other party makes an assignment for the benefit of its creditors, proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law or the other party liquidates or dissolves or attempts to do so; or (c) such termination is allowed by the Order Confirmation. Further, CENIT may terminate this Agreement with no prior written notice if Customer (i) violates a confidentiality obligation; or (ii) experiences a change in control, as provided in Section 12.3. CENIT shall not be obligated to refund any fees paid by Customer if this Agreement is terminated in accordance with this Section 12.2.

12.3. Change in Control. Customer acknowledges the importance of CENIT knowing the party possessing and controlling the use of CENIT's Confidential Information, including CENIT's Software. Customer agrees, therefore, that CENIT has the right to terminate this Agreement for cause in the event that Customer (i) transfers a majority

interest in ownership and/or the control of Customer to any person or entity; (ii) consolidates with or merges into or with another entity, or acquires all or substantially all of the assets or stock or other ownership of any person or entity; or (iii) sells or transfers all or substantially all of its assets to any person or entity.

12.4. Effect of Termination. Upon termination of this Agreement by either party for any reason:

(a) Customer shall be responsible for and shall pay CENIT for all fees and expenses incurred up to the effective date of such termination, calculated in accordance with the payment terms specified in this Agreement and the Order Confirmation.

(b) Customer shall (i) deliver to CENIT all records (electronic, written, or in any other tangible or intangible medium of expression) containing CENIT's Confidential Information, including, but not limited to, the Software, sublicensed Third Party Software and their respective documentation, and (ii) erase or otherwise destroy all copies of such Confidential Information that are fixed or resident in memory in computers or storage devices owned or controlled by Customer. Customer must deliver to CENIT a letter confirming that all copies of CENIT's Confidential Information, including the Software, have been returned or erased and upon request by CENIT, must furnish evidence of such.

(c) Customer's license to use the Software and any sublicensed Third Party Software shall immediately terminate.

12.5. Nonexclusive Remedy. Termination of this Agreement by either party shall be a nonexclusive remedy for breach and shall be without prejudice to any other right or remedy of such party.

### 13. Miscellaneous

13.1. Notices. All notices required or permitted to be given hereunder by one party to the other shall be deemed to have been duly given only if in writing and delivered by: (a) hand delivery, (b) certified mail, return receipt requested, postage prepaid, (c) overnight courier, (d) facsimile, or (e) electronic mail ("e-mail"), in each case directed to the persons and at the addresses or facsimile numbers specified in this Agreement, or such other person(s), address(es) and number(s) as to which notice has been given pursuant to this Section 13.1. All notices shall be deemed received as follows: (a) if hand-delivered, on the date of delivery, (b) if mailed, on the date of receipt appearing on the return receipt card, (c) if sent by overnight courier, on the date receipt is confirmed by such courier service, (d) if sent by facsimile, on the date of receipt printed by the facsimile machine when it reports that the transmission is complete, or (e) if sent by e-mail, 24 hours after the message was sent, provided that any notice relating to a

default or claim of default under this Agreement that is sent by facsimile or e-mail, must also be sent by one of the other methods described above.

13.2. Entire Agreement. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement and the Order Confirmation are the complete and exclusive statements of the agreement of the parties with respect to the subject matter of this Agreement and that they supersede all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to such subject matter. The terms of this Agreement, if applicable, shall apply to other products and services provided by CENIT that are associated with the Services, unless these terms conflict with those in another agreement entered into by Customer with CENIT for those specific products or services, in which case, the terms of that agreement shall control. Any modifications to this agreement must be in writing, signed by both parties. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

13.3. Assignment. Customer shall not assign any of its rights or obligations under this Agreement without the prior written consent of CENIT (which shall not be unreasonably withheld), and any such attempted assignment shall be voidable at CENIT's election and deemed a material default of this Agreement.

13.4. Relationship of the Parties. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture between the parties hereto.

13.5. Marketing Practices. Customer shall (i) conduct business in a manner that reflects favorably at all times on the Software and Services, and the good name, goodwill and reputation of CENIT; (ii) not employ deceptive, misleading or unethical practices that are or might be detrimental to CENIT, the Software, the Services or the public, including disparagement of CENIT, the Software or the Services; (iii) not make any false or misleading representations with regard to CENIT, the Software or the Services; (iv) not publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising material; and (v) not engage in illegal or deceptive trade practices, or any other practices proscribed under this Section 13.5.

13.6. Survival of Rights and Obligations. The rights and obligations of the parties contained in Sections 2.3, 3, 4.4-4.7, 5.1-5.2, 5.6, 6, 7.5, 8.6-8.7, and 10-13 shall survive any termination of this Agreement.

13.7. Severability. If any part of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby and shall be enforced to the maximum extent permitted by applicable law.

13.8. Choice of Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to conflict of laws principles that would cause the laws of any jurisdiction other than the State of Michigan to be applied, and to the exclusion of the provisions of Private International Law and the United Nations Convention on Contracts for the International Sale of Goods. In furtherance of the foregoing, the internal laws of the State of Michigan will control, even if under choice of law or conflict of law analysis the substantive law of some other jurisdiction ordinarily would apply. The state or federal courts or tribunals sitting in or near Auburn Hills, Michigan, shall have sole jurisdiction over any claims by Customer against CENIT arising under or related to this Agreement.

13.9. Injunctive Relief. Customer acknowledges that any material breach of the provisions of this Agreement is likely to result in irreparable injury to CENIT and that the remedy at law alone will be an inadequate remedy for such breach. Accordingly, in addition to any other remedies it may have, CENIT shall be entitled to seek equitable relief without the necessity of proving actual damages.

13.10. Third Party Beneficiaries. CENIT and Customer agree that the suppliers of the Third Party Software sublicensed hereunder shall be third party beneficiaries hereunder and may enforce the terms of any sublicense granted hereunder directly against Customer.

13.11. Headings. The section headings used in this Agreement are intended solely for convenience and shall be given no effect in the construction or interpretation of this Agreement.